

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN CIVIL LIBERTIES UNION, CENTER FOR
CONSTITUTIONAL RIGHTS, PHYSICIANS FOR HUMAN
RIGHTS, VETERANS FOR COMMON SENSE AND
VETERANS FOR PEACE,

Plaintiffs,

v.

DEPARTMENT OF DEFENSE, AND ITS COMPONENTS
DEPARTMENT OF ARMY, DEPARTMENT OF NAVY,
DEPARTMENT OF AIR FORCE, DEFENSE INTELLIGENCE
AGENCY; DEPARTMENT OF HOMELAND SECURITY;
DEPARTMENT OF JUSTICE, AND ITS COMPONENTS
CIVIL RIGHTS DIVISION, CRIMINAL DIVISION, OFFICE
OF INFORMATION AND PRIVACY, OFFICE OF
INTELLIGENCE, POLICY AND REVIEW, FEDERAL
BUREAU OF INVESTIGATION; DEPARTMENT OF STATE;
AND CENTRAL INTELLIGENCE AGENCY,

Defendants.

DOCKET NO. 04-CV-4151 (AKH)

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**PLAINTIFFS' SUPPLEMENT TO THEIR REPLY IN SUPPORT OF MOTION
FOR CONTEMPT AND SANCTIONS**

Plaintiffs respectfully submit this supplement to their reply in support of their Motion for Contempt and Sanctions to draw this Court's attention to two facts. First, Plaintiffs discovered today, upon review of the CIA's prior declarations, that the CIA has previously admitted a "special review" constitutes an "investigation" under 50 U.S.C. § 431(c)(3). Second, the CIA's own declarant has acknowledged that the "special review" team that viewed the tapes included "investigators," including the Assistant Inspector General for Investigations and a senior Investigations Staff manager. Rea Decl. ¶ 11. These facts further demonstrate that the OIG viewed the destroyed videotapes in May 2003 as part of an "investigation" as contemplated by § 431(c)(3).

In the Seventh Dorn Declaration, dated January 27, 2006 and attached hereto as Exhibit O, the CIA concedes that a one hundred and sixteen-page "draft document entitled 'Special Review' and drafted by the CIA's Office of Inspector General" is a "closed OIG investigation document" responsive to Plaintiffs' FOIA request. *See* Ex. O, Document #5, *Vaughn* Index of Closed OIG Investigation Documents at 1, 5-8. This document is dated February 24, 2004. *Id.* In the same declaration, the CIA also concedes that a memorandum "provid[ing] comments to the CIA's Inspector General (IG) on its draft Special Review," dated January 13, 2004, is a "closed OIG investigation document" responsive to Plaintiffs' request. *See* Ex. O, Document #7, *Vaughn* Index of Closed OIG Investigation Documents at 1, 8-11. The CIA's inclusion of these documents in its "*Vaughn* Index of Closed OIG Investigation Documents" demonstrates that a "special review" is an "investigation" under section 431(c)(3) of the CIA Information Act. 50 U.S.C. § 431(c)(3).

Moreover, the “special review” cited in the Dorn Declaration appears to be the same “special review” within which the OIG viewed the destroyed videotapes. The draft “Special Review” is dated February 2004, and the CIA’s declarant has previously stated that the “special review” during which the tapes were viewed concluded in May 2004. *Compare* Document #5, *Vaughn* Index of Closed OIG Investigation Documents at 5-8, with Rea Decl. ¶ 13. Regardless of whether “special reviews,” as a general matter, always amount to “investigations” within the meaning of § 431(c)(3), it appears that, at the very least, the “special review” during which the tapes were viewed was an “investigation” under that provision.

Finally, the CIA’s own declarant has stated that the special review team that viewed the tapes included an “Assistant Inspector General for Investigations,” “a senior Investigations Staff manager,” and “three Investigators.” Rea Decl. ¶ 11. This fact further supports the conclusion that the “special review” was an “investigation.”

Respectfully submitted,

/AS/

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